

**JAN 13 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

ROGELIO GARCIA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-73634

Agency No. A70-934-436

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted January 9, 2006\*\*

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Rogelio Garcia, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") affirmance of an Immigration Judge's ("IJ") denial of his applications for asylum and withholding of removal. We have

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence and may reverse only if the evidence compels a contrary conclusion. *Rostomian v. INS*, 210 F.3d 1088, 1089 (9th Cir. 2000). We deny the petition.

Substantial evidence supports the BIA's decision that petitioner failed to establish a well-founded fear of future persecution based on testimony that he was a guerrilla for one month in 1989 and that his mother told him that the government murdered a friend of his in 1999 who was also a guerrilla. *See Nagoulko v. INS*, 333 F.3d 1012, 1016 (9th Cir. 2003). Thus, his asylum claim fails.

Petitioner failed to raise his withholding of removal and CAT claims in his opening brief, and therefore waived these claims. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

The voluntary departure period is stayed pursuant to *Desta v. Ashcroft*, 365 F.3d 741, 750 (9th Cir. 2004).

**PETITION FOR REVIEW DENIED.**